

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: South Dakota

LIENS AND ADJUSTMENTS OR RECOVERIES

1. The State uses the following process for determining that an institutional individual cannot reasonably be expected to be discharged from the medical institution and return home:

Institutionalized individuals that retain their home property with the intent to return home are identified and monitored. These individuals are checked against the resident assessment instrument (RAI) if discharge is planned within three months. The answer to the resident assessment instrument (RAI) is provided by appropriate staff at the facility. If the answer is "no" the individual is sent notice of the intent to place a lien. If the answer is "yes" the process will continue until the individual has been in the facility for thirteen months. After thirteen months the Estate Recoveries Unit within the Office of Recoveries and Investigations will contact the Medical Review Team to obtain their assessment on the feasibility of this person returning to his home. If their review concludes that it is not medically feasible for this person to return home a notice of the intent to place a lien is sent and action is taken to file the lien for record.
(ARSD 44:04:06:15)

The written notice of intent to impose a lien explains the following:

1. What a lien is,
2. Purpose of the lien when it is placed and the legal description of the property,
3. that it does not effect ownership, control or Medicaid eligibility,
4. the lien will dissolve when the recipient returns to his home property,
5. The Department will not impose a lien if the following lawfully reside in the home:
 - A. Spouse,
 - B. the individuals child who is under age 21 or is blind or disabled,
 - C. the individuals sibling who has equity interest in the home, and has resided in the home for a period of one year immediately prior to the individual being admitted to a facility,
 - D. the individual's adult child who has resided and can use the home as his principal place of residence at least 2 years immediately prior to the date the individual was admitted to a facility and can establish to the department that the adult child provided care which permitted the individual to remain at home rather than in an institution,

6. The amount of the lien will be the amount of Medical services paid on behalf of the recipient for Institutional care.

If the recipient disagrees with the decision to impose a lien he or she may request an administrative hearing within 30 days of receiving the notice of intent to place a lien. If a fair hearing is requested because of the imposition of a lien, the only issue which may be raised at the hearing is whether the requirements for the imposition of the lien have been met. (ARSD 67:48:02:07 and 67:17:02)

The individual may request a hearing orally or in writing. The recipient is given notice that an examiner has been assigned and the date and location of the hearing. The recipient is advised of his right to:

1. Be represented by an attorney, friend or relative at his own expense,
2. respond and present evidence on issues of fact and argue on issues of law or policy,
3. to be present during the giving of all evidence, and
4. to have reasonable opportunity to inspect all documentary evidence,
5. to examine or cross-examine witnesses,
6. to present evidence,
7. to have subpoenas issued to compel attendance of witnesses and production of evidence in the recipients behalf.

The recipient receives notice that failure to exercise their rights or be present at the hearing they will be forfeited and a decision will be made in 90 days.

2. The following criteria are used for establishing that a permanently institutionalized individual's son or daughter provided care as specified under regulations at 42 CFR 433.36(f):
- 1) The son or daughter had resided in and used the home as his or her principal place of residence for a continuous period of two years immediately prior to the date the recipient was admitted to a facility and
 - 2) The individual being cared for meets the criteria as provided in 67:45:01 (Medical Review Level of Care) two years prior to being admitted to a facility.

3. The State defines the terms below as follows:

- Estate

An estate is defined in SDCL 10-40 and ARSD 67:48:02-01. It includes the real and personal property or interest therein of the testor, intestate, grantor, bargainor, vendor, or donor passing to individual legatees, devisees, heirs, next of kin, grantees, donees, vendees, or successors and includes all personal property within or without the state. It also includes any funds remaining in an individual's prepaid burial trust after the individual's burial expenses were paid.

- Individual's Home

A shelter which the individual owns and is used by the individual as his or her principal place of residence, including the buildings and contiguous property. [ARSD 67:46:05:01(3)]

- Equity Interest in the Home

Ownership interest.

- Residing in the home for at least two years on a continuous basis

The individual has resided in and used the home as his/her principal place of residence for a continuous period of at least two years immediately prior to the date the recipient was admitted to any of the facilities listed in SDCL 28-6-24. [ARSD 67:48:02:04(2)]

- Lawfully Residing

A person is considered to be lawfully residing in the home if the person is residing in the home with the permission of the owner, or if the owner is under guardianship or conservatorship, with the permission of the guardian or conservator. [ARSD 67:48:02:04(4)]

4. The State defines undue hardship as follows:

Undue hardships are exemptions allowed under the South Dakota probate statute and as defined below in 5.A. (1-5) and 5.B.

5. The following standards and procedures are used by the State for waiving estate recoveries when recovery could cause an undue hardship, and when recovery is not cost-effective:

Standards, Procedures, Definitions, Waiver, Notice, and Hearing
Procedures regarding undue hardship:

Under South Dakota law, heirs initiate formal probate procedures to settle estates. A personal representative is appointed who causes notice to creditor under SDCL 29A-3-801. The Department of Social Services, as well as other creditors, are required to submit claims to the personal representative within four months of the notice. The

Department of Social Services' claim is subject to state laws on payment of claims, including consideration of exemptions and priority of claims.

- A. A surviving spouse and/or minor children are entitled to the following exemptions under South Dakota law:
1. Homestead property of unlimited value or \$30,000 if sold;
 2. All family pictures; A pew or other sitting in any house of worship; A lot or lots in any burial ground; The family Bible and all schoolbooks used by the family, and all other books as used a part of the family library, not exceeding in value two hundred dollars; All wearing apparel and clothing of the debtor and his family; The provisions of the debtor and his family necessary for one year's supply, either provided or growing, or both, and fuel necessary for one year; All property in this state of the judgment debtor if the judgment is in favor of any state for failure to pay the state's income tax on benefits received from a pension or other retirement plan while the judgment debtor was a resident in this state;
 3. \$4,000 if a head of household or \$2,000 if a single person, not head of household;
 4. Or, if head of a family, instead of the cash stated in #3, the following property; All miscellaneous books and musical instruments for the use of the family, not exceeding two hundred dollars in value; All household and kitchen furniture, including beds, bedsteads, and bedding used by the debtor and his family, not exceeding two hundred dollars in value, but in the case the debtor shall own more than two hundred dollars worth of such property, he must select therefrom such articles to the value of two hundred dollars, leaving the remainder subject to legal process; Two cows, five swine, two yoke of oxen, or one span of horses or mules, twenty-five sheep and their lambs under six months old, and all wool of the same, and all cloth or yarn manufactured therefrom, the necessary food for the animals hereinbefore mentioned for one year, either provided or growing, or both, as the debtor may choose, also one wagon, one sleigh, two plows, one harrow, and farming machinery and utensils, including tackle for teams, not exceeding twelve hundred fifty dollars in value; The tools and implements of any mechanic, whether a minor or of age, used and kept for the purpose of carrying on his trade or business, and in addition thereto, stock in trade not exceeding two hundred dollars in value; The library and instruments of any professional person, not exceeding three hundred dollars in value.
 5. A family allowance of \$18,000 or \$1,500 per month for one year, subject to any objection of the creditor, including the Department of Social Services, that they are aggrieved by the grant of such family allowance by the personal representative of the state.

The Circuit Court determines the allowance of the Department of Social Services' claim as a creditor.

B. Additional Undue Hardship Criteria

The Department of Social Services may consider a compromise or waiver of its estate recovery claim under SDCL 28-6-23 if recovery is dependent upon a determination of liability of a third party in favor of a deceased Medicaid recipient and his heirs' or personal representative's attorney affirms that the remainder of the settlement after payment of attorney's fee and costs is equal to or less than the amount of the State's claim for estate recovery, except that Medical assistance claims related to assignment or subrogation rights under SDCL 28-6-7.1 will not be compromised or waived by the Department of Social Services.

The Department of Social Services may compromise or waive its estate recovery claim only to a maximum of \$10,000, adjusted annually each July 1 by the medical care component of the federal consumer price index or a fixed percentage increase of not less than two percent or more than five percent.

6. The State defines cost-effective as follows (include methodology/thresholds used to determine cost-effectiveness):

Cost-effectiveness is defined as existing if the remainder is greater than one when the cost of recovery is subtracted from the amount recovered. The average cost of initiating recovery in an uncomplicated recovery case is used as the cost of recovery in determining whether or not recovery will be cost effective. Because the cost of recovery is subject to periodic fluctuations in personnel and postage costs, no specific dollar threshold is used.

7. The State uses the following collection procedures (include specific elements contained in the advance notice requirement, the method for applying for a waiver, hearing and appeals procedures, and time frames involved):

Following receipt of a notification of death of a Medicaid nursing home recipient, written notice is sent to the family contact informing them of Department's intent to recover the recipient's resource account after funeral expenses are paid.

Recovery from resource accounts allowed under Medicaid eligibility is pursued in accordance with the statutory affidavit process set forth in the Uniform Probate Code for estates of less than \$15,000. All other estate recovery except that pursued via property liens is also pursued as set forth in the Uniform Probate Code.